IN THE COUNTY COURT OF VICTORIA
AT BENDIGO
CRIMINAL DIVISION
GENERAL LIST

Revised
Not Restricted
Suitable for Publication

Case No. CR-18-02627
Indictment No. H13055226

DIRECTOR OF PUBLIC PROSECUTIONS

v

MEGAN LEE FEATHERBY

JUDGE:	HIS HONOUR JUDGE TRAPNELL
WHERE HELD:	Bendigo
DATE OF HEARING:	28 May 2019
DATE OF SENTENCE:	26 June 2019
CASE MAY BE CITED AS:	Director of Public Prosecutions v Featherby
MEDIUM NEUTRAL CITATION:	[2019] VCC 1227

REASONS FOR SENTENCE

Subject:	CRIMINAL LAW
Catchwords:	Sentence – obtaining a financial advantage by deception (one charge) – possession of a drug of dependence (two charges)
Legislation Cited:	*Crimes Act* 1958, s 82(1); *Drugs, Poisons and Controlled Substances Act* 1981, s 73(1)(a), s 73(1)(b); *Sentencing Act* 1991, s 5(2)
Cases Cited:	*Markovic v R* (2010) 30 VR 589
Sentence:	

APPEARANCES:	Counsel	Solicitors
For the DPP	Mr D R Cordy	John Cain Solicitor for Public Prosecutions
For the Accused	Ms E Millar	Victoria Legal Aid

HIS HONOUR:

1 Megan Lee Featherby, you have pleaded guilty to one charge of obtaining a financial advantage by deception, being a rolled-up count totalling a sum of $185,921.15 (charge 1), and two charges of possession of a drug of dependence, namely methylamphetamine (charge 2) and Cannabis L (charge 3).

2 The maximum penalty for obtaining a financial advantage by deception is ten years' imprisonment, and the maximum penalty for possessing a drug of dependence in the circumstances pertaining to charge 2 is 30 penalty units or one year's imprisonment, and in the circumstances pertaining to charge 3, is 5 penalty units.

3 The Prosecution filed a Summary of Prosecution Opening dated 19 March 2019, which I was told by your counsel I can treat as a summary of agreed facts.[1]

The facts

4 At the time of committing these offences, you were residing in Maryborough. You are the holder of a Certificate III in Information Technology and a Certificate III in Accounting. You have over ten years' experience in bookkeeping, payroll and administration.

5 Between January 2015 and the end of June 2017, you were employed as a part-time office assistant at J & J Beer Pty Ltd, trading as 'Maryborough Machinery' in Carisbrook. Your duties included bookkeeping, payroll, invoicing, accounts payable, purchasing business items and banking, both online and in person. Each week, you would record your days and hours worked in a red notebook. At the end of each week, you were paid in cash for the hours you had worked.

[1] Exhibit P1.

6 J & J Beer Pty Ltd is owned by Jeffrey and Jaclyn Beer. It is a small family business that buys and sells agricultural and industrial machinery and equipment. The company utilises a Bendigo Bank business account. All credits and debits from the bank account are recorded on a spreadsheet using a software program known as 'QuickBooks'. This was one of the duties you performed during your time as a bookkeeper with the company.

7 Charge 1 is a rolled-up charge encompassing 195 unauthorised transactions whereby money which should have gone into the business account of J & J Beer Pty Ltd was fraudulently diverted by you into three personal bank accounts held in your name. These transactions occurred between 27 October 2015 and 28 June 2017, a period of just over twenty months. These transfers were made using online banking facilities held by the company and you with Bendigo Bank. Some of the transfers were made by you during working hours, while others were made when you were not at work. The total amount stolen was $185,921.15.

8 Each time you made an unauthorised transfer of funds from the business account into one of your personal accounts, you listed the transaction in the books of the company by reference to the name of an existing customer of Maryborough Machinery. You made these false accounting entries to conceal your frauds by showing legitimate customers' names on the bank statements against the transactions rather than your name. I note that you are not charged with any offences relating to these false accounting entries; however, the fact that you sought to cover up your crimes by making these false entries is relevant to my assessment of the gravity of your offending conduct.

9 Following the unauthorised transfer of the funds, you then made an entry in the company's 'QuickBooks' spreadsheet showing the payment being made to a customer as listed in the transaction reference generated by the online banking process. You made such entries in respect of each unauthorised transaction so as to make it appear that the transactions were for legitimate

business expenses and so as to cover up your fraud.

10 Jeffrey and Jaclyn Beer were contacted by the Bendigo Bank on 28 June 2017 in regards to some suspected fraudulent transactions. Mr Beer attended at the Maryborough branch of the bank and was told that there were a large number of transfers of funds from the company's account into a personal bank account. Over the ensuing few days, Jeffrey and Jaclyn Beer went through the business bank statements and discovered the unauthorised transactions made by you. On 3 July 2017, they reported the matter to Maryborough police. It was only when your frauds had been detected that you ceased committing these crimes.

11 These facts and circumstances give rise to the allegations supporting charge 1 on the indictment.

12 It is particularly concerning that during the course of this dishonest conduct, you had an opportunity to stop your defalcations and consider the wrongfulness of what you were doing. On 1 December 2016, you transferred $3,300 from the company's account into your account. This is transaction 87 on Schedule A to the indictment. This transaction was queried by Mr or Mrs Beer, and you said that you had made the transaction in error. The Beers accepted your explanation and you reversed the entry.

13 Up until that point in time you had made eighty-seven unauthorised transactions totalling $88,482.90. Following the detection of the $3,300 fraudulent transaction by the Beers, you continued your nefarious scheme and defrauded your employer of a further $97,438.25 by committing a further one hundred and eight criminal acts of the same nature as your past frauds. This is a significant aggravating circumstance in my assessment of the objective gravity of your offending conduct.

14 Given the opportunity offered to you to desist, you not only continued with the misappropriations, but increased your deprivations of the company to which

you owed your loyalty, committing a gross breach of trust. Accordingly, I assess your moral culpability to be high.

15 The matter was investigated by Maryborough police, who executed a search warrant at your home on 8 August 2017. You were arrested, and a number of relevant items were located. You were conveyed to the Maryborough police station and took part in a record of interview. During this interview, you admitted transferring the money into your personal accounts; however, you said that you did this with authorisation and on the instructions of Mr Beer, as you and he were engaged in a sexual relationship. You also admitted to falsifying the QuickBooks' spreadsheets to cover up the transfers of money, but said you also did this on the instructions of Mr Beer.

16 At the plea hearing, your counsel indicated that you accepted that these were lies, but you did not appear to resile from the allegation that you and Mr Beer were engaged in a sexual relationship, although you accepted that the transactions were not done with his authority. Moreover, during your record of interview, you made allegations against Mr Beer that you and he were engaged in illicit drug taking

17 In your interview with Ms Carla Lechner, a clinical psychologist who was engaged by your legal representative to prepare a psychological report on you, you continued your assertions that you had some 'sexual liaisons' with Mr Jeffrey Beer. You also asserted that it was through your association with Mr Beer that you relapsed into illicit drug use 'with him'.

18 Mr Beer was called by the prosecution to give evidence regarding these matters. He swore on his oath that you and he were never engaged in any sexual activity together and that he never took any illicit drugs in his life. Your counsel did not cross-examine Mr Beer regarding these matters. Consequently, his evidence is unchallenged and I unhesitatingly accept it as being honest and reliable.

19 It follows that you have deliberately sought to impugn the character of Mr Beer in a serious manner which could only cause greater distress to him and his family. Accordingly, I find that you completely lack any remorse for your conduct.

20 Moreover, the fact you perpetuated these lies in your interview with Ms Lechner means that I can place less reliance on the other things you told her. Since her diagnoses are largely based on your self-report, this puts in question the accuracy and, thereby usefulness, of her whole report. The onus of proving mitigating circumstances is on you on the balance of probabilities.

21 So far as charges 2 and 3 are concerned, during the search of your premises, a small zip-lock bag containing methylamphetamine was located in a bedside table in your bedroom. The weight of the methylamphetamine was 0.3 grams. The prosecution accepts, and I sentence you on the basis that you possessed this drug for your own personal use. These facts and circumstances give rise to the allegations supporting charge 2 on the indictment.

22 Also during the search of your premises police located a glass jar in the wardrobe of your bedroom which contained a quantity of cannabis weighing 6.3 grams. Once again, the prosecution accepts, and I sentence you on the basis that this drug was possessed by you for your own personal use. Moreover, the quantity of this drug is below a 'small quantity', which is 50 grams.

23 Accordingly, in respect of charge 2, you fall to be sentenced in accordance with s 73(1)(b) of the *Drugs, Poisons and Controlled Substances Act 1981*, and in respect of charge 3, you fall to be sentenced in accordance with s 73(1)(a) of that Act.

24 Following your initial interview, you were not charged and further investigations were conducted. On 14 August 2017, you re-attended the Maryborough police station and took part in a second record of interview.

During this interview, you continued to provide the same explanations to police as you had in the first interview.

25 It appears that you spent most of the money that you derived from your criminal conduct by engaging in online shopping. You made no substantial purchases with the money and you have no assets to show for your crime. You also used some of the proceeds of your crime to support your drug habit.

Victim impact

26 I received victim impact statements from Jeffrey Beer, David Beer and Jaclyn Lisa Rae Beer.[2]

27 Jeffrey Beer deposes that the theft of the money from his business was a devastating experience for him and he was concerned that the business might go into liquidation. This had a serious impact on his mental health, leading to 'insomnia, depression, anxiety and drinking alcohol every night'. He has had to increase his workload and working hours in order to repay loans the business had to take out in order to continue operating. This has had a dramatic effect on his family life by reason of his having to work long hours resulting in milestones in his young son's life being missed.

28 In particular, the lies that you told regarding the circumstances in which you came to possess the proceeds of your crimes have also had a significant impact on Mr Beer. He states:

> I kept worrying about the malicious rumours that Megan Lee Featherby had circulated about us having an affair and that I had gifted her these funds. Megan Lee Featherby's lies have a large amount of negatives towards me as a husband and business owner, especially in a small rural town.

29 Your crime has also had an adverse effect on Mr Jeffrey Beer's physical health in relation to a double hernia operation whereby he had to curtail his recovery period in order to return to 'physical work straight away'.

[2]Exhibit P2.

30 David Beer, Jeffrey Beer's father, who is aged sixty-nine years, describes the 'horrendous time our family has endured'. He describes his son and daughter-in-law being 'gutted financially and mentally' as a result of your offending conduct. In particular, he points to the very serious impact your offending had on his daughter-in-law's mental state, particularly at a time when she was looking after her baby.

31 Mr David Beer also refers to the fact that the lies pertaining to his son having a sexual relationship with you placed a substantial strain on his family, which he said 'continued to her guilty plea'. He said that he had to delay his retirement and his health has suffered significantly. He concludes:

> The total package of Megan's destruction has been overwhelming financially, morally and trust (sic). It will be years of extra work to get back on keel.

32 In her victim impact statement, Mrs Jaclyn Beer refers to what has been 'a truly exhausting and frustrating chapter in my life'. She has been emotionally, physically, financially and socially affected to a very significant degree as a result of your offending conduct. As a consequence of your offending, Mrs Beer took over the running of the business office which took her away from her two young sons at a critical time in their early development.

33 She has suffered severe mental anguish herself and great concern for her husband's mental state. Your false accusations regarding having a sexual relationship with Mr Beer significantly exacerbated Mrs Beer's suffering. She describes feeling 'fearful, anxious and full of despair' upon hearing rumours circulating around Maryborough regarding the allegations you were making regarding being in a sexual relationship with her husband. She required psychological counselling and was treated for depression and anxiety, and needed to take anti-depressant medication.

34 In November 2017, Mrs Beer was diagnosed with fibromyalgia, which is

an autoimmune disease, with stress being one of its major triggers. The ongoing stress severely impacted on Mrs Beer's physical health, with her suffering 'heightened pain, exhaustion and sleep deprivation'. This required her to take a number of medications, and rest more frequently, which impacted on her ability to perform daily tasks.

35 Mrs Beer observes that it will take 'many years' for the business to financially recover from your deprivations. She concludes:

> Finally, I feel very disheartened that Megan Featherby has not shown one bit of remorse, or regret for her actions, and as a result I now have trust issues about hiring new staff for the business. Additionally, had I believed her lies my marriage would now be over and my boys could be potentially caught in the middle of an unpleasant custodial situation.

36 Pursuant to s 5(2) of the *Sentencing Act 1991*, in sentencing you, I am required to have regard to the impact of your offences on any victim of them, the personal circumstances of any victim of your offences and any injury, loss or damage resulting directly from your offences. In the present case I must be careful to only take account of the effect of the offence itself and not the lies you told to police in order to avoid taking responsibility for those offences.

37 In this case, it is difficult to separate out the impact on the victims of the offending itself from the impact of the lies you told to avoid taking responsibility for the offence. To the extent that I am able to do so, you will not be punished in respect of the effect of your lies on the victims. Nonetheless, the fact you told those lies is relevant to my assessment of your degree of remorse, the insight you have into your offending conduct, the need to specifically deter you, your prospects of rehabilitation, and your general character.

Offence seriousness

38 Taken overall, your offending conduct is grave. Your counsel accepted that the offending is 'serious' because the victim in this matter is a family-owned small business. She accepted:

> Ms Featherby was in a position of trust, being the business's bookkeeper, and the amount stolen by Ms Featherby was large and over a lengthy period of time.

39 Your counsel, however, submitted that: 'This is not an example at the higher end of seriousness for this type of offending'. I must say that I found your counsel's reasons for advancing this proposition unconvincing.

40 Your counsel submitted that your offending came about in the context of no longer being in a relationship with your husband Barry, who was financially controlling. You instructed your counsel that you commenced online shopping because you had new-found financial freedom. However, this soon became an addiction.

41 Ms Lechner opines that this shopping addiction was 'likely a function of her depression and a means to distract herself from her unhappiness'. However, Ms Lechner also opines that your depression 'is partly reactive' to your then pending court hearing. She also states that buying clothing and trinkets was soothing to you and 'comforting at a time when she lacked support and affection'.

42 Whilst these circumstances, if true, may provide some explanation for your offending conduct, it does not serve to mitigate it to any great extent. If this offence had been a one-off aberration of otherwise good character, things might be different, but your offending was protracted and sustained and you had many opportunities to repent and desist.

43 I find that yours is a moderately serious example of the offence given the amount involved, which was a very significant sum for a small family business, and your offending has had a devastating impact on the financial viability of that business.

44 Other factors that add to the gravity of your offending conduct are the grave breach of trust involved, the fact the offending was committed over a period of eighteen months, that it involved 195 discrete criminal acts, that you sought to

cover your tracks by making false entries in the books of account and, significantly, that when you had an opportunity to desist from continuing with your nefarious scheme to defraud this business, when your $3,300 transaction was detected, you continued committing this offence for a further seven months and obtained nearly $100,000 in 108 separate fraudulent transactions. Moreover, your serious breach of trust which you owed to this family business and its owners is a significant aggravating feature of this crime.

45 I find that your crimes were sustained and sophisticated to the extent that you were able to avoid detection for a long period of time by covering your tracks through false entries in the company's books of account. Had it not been for the company's banker detecting the large number of transactions going into your private account, your deprivations of this family business no doubt would have continued.

46 Whilst I accept your offending is not 'at the higher end of seriousness for this type of offending', it is nonetheless a serious enough example of this offence. The fact your crimes were committed to satisfy your 'addiction' to online shopping, is an explanation but not an excuse nor a mitigating circumstance. It is not as though you were in necessitous circumstances and committed the offences under severe financial pressure.

47 Clearly, denunciation, general deterrence and just punishment must loom large in sentencing you. You also have a relevant finding of guilt for theft of a motor vehicle on 11 February 2015 which, whilst not a significant prior criminal history, nonetheless suggests that there is some need to specifically deter you from dishonest conduct. Moreover, given your lack insight into your offending conduct means I can only adopt a cautious approach to your prospects for rehabilitation.

Personal circumstances

48 You are now aged forty-five years[3] and you were aged between forty-one and forty-three years at the time of committing this offence.

49 You were raised in Melbourne by your parents and you have two older siblings. You have a close relationship with your older half-brother but have little contact with your older sister.

50 You report having had a generally happy childhood without any major problems in your upbringing and family life. Apparently you were present when a family friend was sexually abused by a neighbour as a child and you have struggled to deal with traumatic memories of this incident.

51 You had been residing with your parents in Maryborough since 2014 and you were living with them at the time of this offending. Your father passed away in April 2018 and you now live with your mother. Your mother is not in good health and you are her carer.

52 I was told that your mother is 'quite frail with arthritis'. She had a knee replacement in May 2018, she suffers from back pain and walks with the assistance of a walking frame. She is apparently able to attend to basic self-care; however, she is unable to do more burdensome tasks such as gardening. A number of modifications have been made to her home in order to assist her with daily living. She is unable to drive more than a short distance and has been entirely dependent upon you since your father's death.

53 I have read your mother's letter dated 1 May 2019 and taken its contents into account.[4] She notes, among other things, that you have 'struggled to come to terms with the suicide of your husband Barry Featherby in January 2010'. She notes that she relies on you to drive her to medical appointments and other outings which are beyond the town of Maryborough. I have taken into account the matters contained in your mother's letter.

[3]Date of birth 2 March 1974.
[4]Exhibit D3.

54 Your counsel accepted that your mother's circumstances were not sufficient to establish exceptional circumstances under the principles espoused in cases such as *Markovic v The Queen*.[5] Nonetheless, I accept that your concern for your mother's situation will make serving a custodial sentence more burdensome on you.

55 So far as your education is concerned, you attended primary and secondary school in Mordialloc and successfully completed Year 12. Following this you commenced a Bachelor of Arts degree at Monash University, which you did not complete. You then later completed accounting and information technology courses at TAFE.

56 After leaving university, you worked in the hospitality industry for a number of years. After completing your accounting course, you worked as a bookkeeper in addition to continuing work in the hospitality industry. You have had a 'solid' employment record until the time of committing this offence.

57 You are currently unemployed and since mid-2018 you have been in receipt of a carer's pension. This is approximately $500 per week and you use this money to contribute to household bills and to pay general living expenses. Apparently you also paid for your father's funeral.

58 You married your first husband, Tim Phillips, after leaving university. You have a son, Sam, who is now twenty-three years old. The relationship with Mr Phillips ended amicably and you now have an ongoing relationship with him in your role as Sam's parents. You have a close relationship with your son, Sam, who lives in Melbourne, and who is undertaking an apprenticeship to become an electrician.

59 You married your second husband, Barry Featherby. This relationship was marred by family violence and his controlling behaviour, which involved emotional and financial abuse. Through him you were introduced to drug

[5](2010) 30 VR 589.

abuse by using ‘speed’. As a result you lost many of your friends during the period of your marriage, and you continue to have few social supports.

60 Sadly, your marriage to Barry ended in 2010 when he committed suicide by hanging himself. You discovered his body in the backyard of your premises.

61 You have had a further relationship with a man named Ryan; however, he was a drug user and that relationship was also marred by drug use and family violence. During your relationship with Ryan, you switched from using ‘speed’ to using ‘ice’.

62 You had ‘dabbled’ in illicit substances when you were young, including cannabis and speed; however, it was during the time you were living with your husband, Barry that your drug use increased substantially. You also drank large quantities of alcohol on a regular basis whilst married to Barry.

63 Because of Barry’s controlling and emotionally abusive behaviour, you began to suffer from anxiety. Your counsel submitted that you used speed to manage this anxiety. She said that you felt that when you were with Barry your drug and alcohol abuse created a ‘protective bubble which he could not penetrate’.

64 Your counsel further submitted you continued to use illicit drugs as a coping mechanism after Barry’s death and this explains your possession of the methylamphetamine and cannabis, the subject of charges 2 and 3 respectively.

65 You have continued to use ice up until relatively recently when you were in a relationship with Ryan. Your habit increased to daily consumption and you were using ice at the time of committing the offence charged in charge 1. You also continued to use cannabis on a daily basis until recently.

66 I was told by you counsel that you have been abstinent from illicit substances for several months without requiring professional assistance. You have also reduced your alcohol consumption, which is now no longer at a ‘problematic

level'. You have not engaged in drug or alcohol counselling or participated in any rehabilitative program for your drug and alcohol abuse.

Physical and mental health

67 In relation to your physical health I was told you currently suffer from hypertension for which you are prescribed daily medication. You also suffer from eczema which you treat daily with cream. The eczema worsens with stress and produces a red rash which you find painful. I accept that these condition will to some extent effect the way you serve any sentence of imprisonment.

68 In relation to your mental health, I was told you were was first diagnosed with depression and anxiety by your GP in Melbourne approximately 15 years ago, at a time when you and your husband Barry were still together.

69 You were assessed by Carla Lechner, a clinical psychologist, who provided a report dated 16 February 2019.[6] Ms Lechner diagnosed you as suffering post-traumatic stress disorder ('PTSD') and complicated grief symptoms as a result of the death of your husband Barry. Ms Lechner noted that you had separated from Barry for a short period prior to his death, but at the time of his death you and he had reconciled. As a result of finding Barry hanging in the back yard, you continue to suffer intrusive images of this event, as well as images of Barry's face at the 'viewing' for his funeral, where his face was distorted. Ms Lechner observed that other symptoms of your PTSD include avoidance, flashbacks and increased anxiety.

70 Following testing, Ms Lechner opines that you are suffering from a major depressive disorder. She notes that you have a history of a long-standing mood disorder, which has been masked by drug use.

71 Ms Lechner considers that you have:

[6]Exhibit D2.

72 the capacity to reflect on the impact that [your] behaviour has on both [your]self and others but is easily overwhelmed by social and emotional factors that undermine [your] judgement and decision-making, especially when [you are] substance-effected.

73 Ms Lechner continues you are:

74 able to identify triggers to [your]r negative feelings but [are] less well able to manage them in an adaptive manner. [Your] use of drugs to quell internal distress has only served to aggravate [your] underlying depression and anxiety.

75 Unsurprisingly, Ms Lechner diagnosed you as suffering from a stimulant use disorder in partial remission. You are currently prescribed Diazepam for anxiety and Effexor for depression. You have recently seen your GP to obtain a mental health care plan and you are on a waiting list for counselling through a psychologist in Maryborough.

76 So far as a potential term of imprisonment is concerned, Ms Lechner opines that owing to your age, lack of experience with the criminal justice system and the role that you play in caring for your mother, you are likely to find prison a 'difficult environment to negotiate'. Ms Lechner also opines that she anticipates an aggravation of your symptoms if you are to be imprisoned.

77 Finally, in an addendum to her report, Ms Lechner notes that given the state of your mental health, you are likely to find a term of imprisonment more difficult to serve than a prisoner without your symptoms. I am prepared to accept that to some extent this is so and that, for this reason, *Verdins* principle 5 is engaged in your case to some degree.

78 However, given the rigor with which the courts must apply the principles elaborated in *Verdins'* case,[7] I find the nature and severity of your mental disorders provides an insufficient basis to engage any other *Verdins* principles

[7] See eg *DPP v O'Neill* (2015) 47 VR 395.

in your case. Specifically, I am not satisfied on the balance of probabilities on the material before me that any mental condition you may have been suffering at the time of committing this offence materially contributed to your offending conduct. Moreover, I am not satisfied that your existing mental condition is of such severity that there is a **serious risk** of imprisonment having a **significant adverse effect** on your mental health, so as to engage *Verdins* principle 6.

Mitigating circumstances

79 It was submitted on your behalf that you indicated your plea of guilty at a relatively early stage in the proceedings. Although a contested committal hearing was listed, it ultimately did not proceed. This spared the complainants and other witnesses the trauma of having to give evidence and saved court resources.

80 However, you were charged with these offences on 31 October 2017 and you did not plead guilty in the Magistrates' Court until 21 December 2018. Accordingly, whilst yours is a relatively early plea, it is not a plea entered at the earliest reasonable opportunity.

81 Nonetheless, your plea of guilty has utilitarian benefit and also indicates a willingness on your part to facilitate the administration of justice and an acceptance by you of responsibility for your criminal conduct.

82 In her report Ms Lechner says you are 'deeply regretful' of your actions and you recognise the need for professional assistance. She goes on to say that you acknowledged to her that you had done the wrong thing and you expressed 'regret and shame' for your actions. She further says you acknowledged you cannot blame drugs for your offending behaviour. However, Ms Lechner also opined that your profile on the Paulhus Deception Scale 'is indicative of a person who may be lacking in self-insight'.

83 Your counsel submitted that your plea of guilty is also indicative of genuine remorse. However, you made denials in both of your records of interview regarding the circumstances of your offending, and you sought to set up a scurrilous defence by casting serious aspersions on the good character of one of the victims of your dishonest scheme. Accordingly, whilst you are undoubtedly regretful, and perhaps ashamed, for the situation in which you find yourself and the effect your offending has had on you and your aged mother, there is insufficient evidence before me to make a finding in your favour that you demonstrate true contrition and remorse for your offending conduct.[8]

84 I accept you have reasonably good prospects of rehabilitation provided you remain drug free upon your release from custody. You have a limited prior criminal history. You have demonstrated your willing to address your substance abuse and mental health issues through professional counselling. And you have the support of your mother and a place to live upon your release from custody.

85 You have also used your recent time in custody on remand to further your prospects of rehabilitation. You have completed courses entitled 'Jobs and Careers', 'Take Stock A' and 'Take Stock B' and you have been assessed regarding your vocational skills in reading and numeracy. You have also commenced Certificate II courses in 'Kitchen Operations' and 'Cleaning'.[9]

86 I also accept that a custodial sentence will be more burdensome on you by reason of your mother's health problems and your inability to care for her, and also by reason of your suffering PTSD and depression together with some physical ailments.

87 Application of sentencing principles

[8]See *Barbaro v The Queen* (2012) 226 A Crim R 354, 364–365 [32]–[38] ((Maxwell P, Harper JA and T Forrest AJA).
[9]Exhibit D4.

88 I have had regard to current sentencing practices in relation to the offence of obtaining a financial advantage by deception in light of the decision of the High Court of Australia in *DPP v Dalgliesh (a Pseudonym)*.[10] I have considered the sentencing snapshot for this offence[11] and the cases referred to me by the parties[12] and others concerning current sentencing practices in relation to this offence.[13]

89 It is difficult to gauge more than a very general yardstick from so-called 'comparable cases', given the wide range of offending conduct which can constitute this offence and the myriad of personal circumstances pertaining to individual offenders. Nonetheless, to the extent that I have been able to gain any assistance from comparable cases, I have sought to do so in your case.

90 The basic purposes for which a court may impose a sentence are just punishment, deterrence, both specific and general, rehabilitation, denunciation and protection of the community. In sentencing you, I must have regard to a range of factors, such as the seriousness of the offences, your culpability for them, the effect on your victims and your personal circumstances.

91 I am required to balance the interests of the community in denouncing criminal conduct with the interests of the community in seeking to ensure that, so far as is possible, you are rehabilitated and reintegrated into society.

92 General deterrence and denunciation are very important sentencing considerations for this offence. Whilst just punishment, general deterrence and denunciation must be given significant weight in my instinctive synthesis, I am of the view, in your case, that specific deterrence also needs to be given some weight, given the nature of your offending conduct, the association of that offending with illicit drug use and your, albeit relatively minor, prior

[10](2017) 91 ALJR 1063.
[11]Victoria, Sentencing Advisory Council, *Sentencing Snapshot – Obtaining a financial advantage by deception*, April 2019 (No 229).
[12]*Leimonitis v The Queen* [2018] VSCA 198; *Caruana v The Queen* [2011] VSCA 180; *DPP v Moeller* [2018] VCC 248 (Judge Davis); *DPP v Howard* [2018] VCC 967 (Judge Mason); *DPP v Cirianni* [2018] VCC 2288 (Judge Cohen).
[13]*DPP v Caulfield* [2019] VSCA 131.

criminal history. I assess your prospects for rehabilitation as being reasonably good provided you remain drug free upon your release from custody.

93 I am of the view that the purposes for which these sentences are imposed cannot be achieved by imposing sentences that do not involve your confinement.[14]

94 Stand up Ms Featherby

95 On the charge of obtaining a financial advantage by deception (charge 1) you will be convicted and sentenced to be imprisoned for 2 years.

96 I order that you serve a minimum of 1 year's imprisonment before becoming eligible for parole.

97 On the charge of possessing a drug of dependence methylamphetamine (charge 2) you will be convicted and fined $500. Referred to Fines Victoria for collection.

98 On the charge of possessing a drug of dependence Cannabis L (charge 3) without conviction you are fined $200. Referred to Fines Victoria for collection.

99 I declare 31 days (not including this day) as the period of pre-sentence detention to be reckoned as already served under this sentence and I direct that the fact that declaration was made and its details be noted in the records of the court.

100 Pursuant to s 6AAA of the *Sentencing Act 1991* I state that the sentences I would have imposed on you but for your pleas of guilty would have been:

101 On charge 1 a sentence of 3 years' imprisonment with a non-parole period of 2 years' imprisonment;

[14] *Sentencing Act 1991* (Vic) s 5(4).

102 On charge 2 convicted and fined $750; and

103 On charge 3 convicted and fined $300.

104 Remove the prisoner.

105

106